




**CERTIFICATE OF SERVICE**

This is to certify that I have this day served all counsel in this matter by depositing a copy of the within and foregoing **NOTICE TO SUPERIOR COURT OF DECATUR COUNTY OF FILING OF NOTICE OF REMOVAL TO UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA, ALBANY DIVISION** in the United States Mail, in an envelope bearing adequate postage thereon, addressed as follows:

Robert M. Margeson, III  
Margeson, Flynn & Associates, P.C.  
P.O. Box 768  
Albany, Georgia 31701

This 25<sup>th</sup> day of April, 2013.

  
Angela H. Smith

Moore Ingram Johnson & Steele, LLP  
Emerson Overlook  
326 Roswell Street  
Marietta, Georgia 30060  
770/429-1499  
770/429-8631 fax  
[wrj@mijs.com](mailto:wrj@mijs.com)  
[ahsmith@mijs.com](mailto:ahsmith@mijs.com)

IN THE SUPERIOR COURT OF DECATUR COUNTY  
STATE OF GEORGIA

SCRAP FEDD and  
TRAVIS FEDD,

Plaintiffs,

VS

BORDEN DAIRY COMPANY OF  
ALABAMA, LLC, ACE AMERICAN  
INSURANCE COMPANY AND  
DOUGLAS EARL DEVOE,

Defendants.

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CIVIL ACTION

FILE NO. 13CV00155

DEMAND FOR JURY TRIAL

FILED IN OFFICE  
2013 Mar 18 12:19 PM  
CECILIA WILLIS  
CLERK OF SUPERIOR COURT  
DECATUR COUNTY, GEORGIA  
2013-377

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SUMMONS

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TO: Borden Dairy Company of Alabama, LLC  
c/o C.T. Corporation, Registered Agent  
1201 Peachtree Street, N.E.  
Atlanta, Georgia 30361

You are hereby summoned and required to file with the Clerk of said court and  
serve upon the Plaintiffs' attorney, whose name and address is:

ROBERT M. MARGESON, III  
MARGESON, FLYNN & ASSOCIATES, P.C.  
P. O. BOX 768  
ALBANY, GA 31702

an answer to the Complaint which is herewith served upon you, within 30 days after  
service of this summons upon you, exclusive of the day of service. If you fail to do so,  
judgment by default will be taken against you for the relief demanded in the Complaint.  
If you are a corporation, be advised that Georgia law requires that you be represented by  
an attorney in this matter.

This 18<sup>th</sup> day of March, 2013.

BY: Dulorah H. Hartner  
Dp. Clerk, Superior Court of Decatur County



IN THE SUPERIOR COURT OF DECATUR COUNTY

STATE OF GEORGIA

SCRAP FEDD and  
TRAVIS FEDD,

Plaintiffs,

vs.

BORDEN DAIRY COMPANY OF  
ALABAMA, LLC; ACE AMERICAN  
INSURANCE COMPANY; AND  
DOUGLAS EARL DEVOE,

Defendant.

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CIVIL ACTION  
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2013-377

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COMPLAINT FOR DAMAGES

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COMES NOW, Plaintiff above named and files this, his Complaint, naming as Defendants,  
BORDEN DAIRY COMPANY OF ALABAMA, LLC, ACE AMERICAN INSURANCE  
COMPANY, AND DOUGLAS EARL DEVOE and shows the Court the following:

-1-

Defendant, DOUGLAS EARL DEVOE, was an employee of BORDEN DAIRY  
COMPANY OF ALABAMA, LLC, and may be served by personal service at his home, 16 Lone  
Oak Road, Ozark, Alabama 36360. When the Defendant named herein is personally served with the  
Complaint and Summons in this matter, he will be subject to the jurisdiction of this Court.

-2-

The defendant, BORDEN DAIRY COMPANY OF ALABAMA, LLC, is a foreign  
corporation duly authorized and registered to do business within the state of Georgia and may served

by certified mail on its agent for service of process, CT Corporation System, 1201 Peachtree Street, NE, Atlanta, Georgia 30361. When this defendant is served it will be subject to the jurisdiction of this Court.

-3-

The Defendant to her is the insurance carrier of **BORDEN DAIRY COMPANY OF ALABAMA, LLC** and is listed as a named defendant pursuant to O.C.G.A. Section 46-7-12(c) as defendant, **BORDEN DAIRY COMPANY OF ALABAMA, LLC**, is a Motor Common Carrier as prescribed in O.C.G.A. Section 46-1-1 (9) et.seq., and **ACE AMERICAN INSURANCE COMPANY** is a foreign corporation duly registered to do business within the State of Georgia, and may be served by certified mail on its agent for service of process, Mark G. Irwin, 500 Colonial Center Parkway # 200, Roswell, Georgia 30076. When this Defendant is served with a copy of the Summons and Complaint, it will be subject to the jurisdiction of this Court.

-4-

Pursuant to O.C.G.A. §14-2-510(4), venue is properly laid in Decatur County, Georgia, as the accident occurred in Decatur County, Georgia.

-5-

On or about December 4, 2012, at approximately 6:13 P.M., Plaintiff, **SCRAPP FEDD**, was driving a John Deere Tractor which was owned by Plaintiff, **TRAVIS FEDD**, and said vehicle was traveling East on GA 38 in the right lane in Decatur County, Georgia.

-6-

On or about December 4, 2012, at approximately 6:13 P.M., Defendant, **DOUGLAS EARL DEVOE**, was driving a 2009 International Eighteen Wheeler Tractor Trailer, which weighed more

than 10,000 pounds, which vehicle was traveling East on GA 38 in the right lane directly behind the John Deere Tractor which Scrapp Fedd was operating in Decatur County, Georgia.

-7-

At the aforementioned date, place and time, Defendant **DOUGLAS EARL DEVOE**, without any warning whatsoever, **struck the vehicle in which Plaintiff SCRAPP FEDD was driving in the rear** causing a collision of force and impact and forcing the vehicle in which Plaintiff was driving to catapult forward and rest approximately 24 feet east of the point, and it thrust the Defendant's tractor trailer truck forward to an uncontrolled rest approximately 300 feet east in the median facing east.

-8-

Immediately prior to the aforementioned collision, Defendant **DOUGLAS EARL DEVOE**, **failed to maintain a proper lookout ahead** for other known and reasonably foreseeable vehicles.

-9-

Immediately prior to the aforementioned collision, Defendant **DOUGLAS EARL DEVOE** was **driving at a speed greater than was reasonable and prudent** under the conditions then and there existing in violation of O.C.G.A. §40-6-180, and said action on the part of this Defendant constitutes negligence per se.

-10-

At all times material herein, Defendant **DOUGLAS EARL DEVOE** was **operating a motor vehicle in reckless disregard for the safety of persons or property** within the meaning of and in violation of O.C.G.A. §40-6-390, and said action on the part of this Defendant constitutes negligence per se.

-11-

Immediately prior to the aforementioned collision, Defendant **DOUGLAS EARL DEVOE** **failed to exercise ordinary care** to avoid creating an unreasonable risk of harm to other motorists.

-12-

Immediately prior to the aforementioned collision, Defendant **DOUGLAS EARL DEVOE** negligently **failed to maintain control of the vehicle** he was operating.

-13-

Immediately prior to the aforementioned collision, Defendant **DOUGLAS EARL DEVOE** **followed the vehicle in which Plaintiff SCRAPP FEDD was driving more closely than was reasonable and prudent** in violation of O.C.G.A. §40-6-49, and said action on the part of said Defendant constitutes negligence per se.

-14-

As a result of the aforementioned negligence of Defendant **DOUGLAS EARL DEVOE**, Plaintiff **SCRAPP FEDD** suffered great pain of body and mind and will continue to suffer physical pain and mental anguish in the future because of his injuries.

-15-

As a result of the aforementioned injuries, Plaintiff **SCRAPP FEDD** was placed under the care of physicians and was treated and has incurred medical expenses as a result thereof. Plaintiff will continue to incur medical and related expenses for the treatment of his injuries in the future.

-16-

At the time of the subject collision, Plaintiff **SCRAPP FEDD** was seventy (70) years of age and had a reasonable life expectancy of 11.86 years according to the Annuity Mortality Table for 1949, Ultimate.

-17-

All of Plaintiff's injuries and damages, as aforesaid, were caused solely, directly and proximately by the negligence of said Defendant.

-18-

Immediately prior to the collision, Plaintiff **TRAVIS FEDD'S** John Deere Tractor was in good condition and in excellent working order, and immediately after said collision said tractor was damaged and unusable as Defendants' caused property damage to Plaintiff **TRAVIS FEDD'S** John Deere Tractor.

-19-

As a result of the state of disrepair of the tractor, Plaintiff **TRAVIS FEDD** could not perform any type of farming activity and therefore, lost money as he was unable to plant wheat in the wheat season.

-20-

At all times mentioned herein, Defendant **DOUGLAS EARL DEVOE** was acting within the course and scope of his employment, with his employer, Defendant **BORDEN DAIRY COMPANY OF ALABAMA, LLC**.




-21-

At the date, place and time of this automobile collision mentioned herein, the negligence of Defendant **DOUGLAS EARL DEVOE** as is set out herein is imputed to his employer, Defendant **BORDEN DAIRY COMPANY, LLC**.

**WHEREFORE**, Plaintiffs demand a trial by jury on all issues, judgment against Defendants in an amount which will fully and completely compensate Plaintiffs for their injuries and damages, Court costs of this action, and any and all further relief to which they are entitled.

This 12<sup>th</sup> day of March, 2013.

**MARGESON, FLYNN & ASSOCIATES, P.C.**  
**Attorneys for the Plaintiffs**

By:   
Robert M. Margeson, III  
State Bar Number 470500  
Leigh Ann Flynn  
State Bar Number 470497  
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[laflynn@margesonlaw.com](mailto:laflynn@margesonlaw.com)

SERVE DEFENDANTS BY CERTIFIED MAIL AT:  
**BORDEN DAIRY COMPANY OF ALABAMA, LLC**  
C.T. Corporation System  
1201 Peachtree Street N.E.  
Atlanta, Georgia 30361 (Fulton County, Georgia)

**ACE AMERICAN INSURANCE COMPANY**  
Mark G. Irwin, 500 Colonial Center Parkway # 200  
Roswell, Georgia 30076

SERVE DEFENDANT'S BY PERSONAL SERVICE:

**DOUGLAS EARL DEVOE**

16 Lone Oak Road

Ozark, Alabama 36360